Public Prosecutor v Inspector Hj Azwan bin Dato Paduka Seri Hj Abdul Rahman & Ors

HIGH COURT (BRUNEI DARUSSALAM) — CRIMINAL TRIAL NO 7 OF 2009
HAIROL ARNI MAJID J
14 MAY 2011

Criminal Procedure — Police investigation — Unsatisfactory conduct of — Adverse inference — Assault of detainee by police — Subsequent death of detainee — Multiple injuries and fractures on body — Fingerprint mark on neck and footprint/heel mark on back — Failure to carry out forensic analysis on all available evidence — Key prosecution witnesses inconsistent and chameleon-like in testimony — Witnesses untruthful and unworthy of credit

A police detainee, who was arrested on suspicion of thievery, was allegedly assaulted by police officers while in detention and died four days after his arrest of infection of the brain. The post-mortem report showed he had 61 injuries and three broken ribs, a fingerprint mark on the neck and a footprint or heel mark on the back. The four accused were jointly charged, inter alia, with assaulting the detainee. At the end of the prosecution's case, the prosecution conceded its inability to prove the various charges against the accused. The court, however, ruled a prima facie case had been made out in respect of two charges — one, of voluntarily causing hurt to the detainee for the purpose of extorting a confession from him, and the other, for slapping the detainee in the face. Both offences were allegedly committed at the CID Room at the Sengkurong Police Station a day after the detainee was arrested. Although the prosecution called 30 witnesses, their key witnesses were PW1, an 'accomplice' of the detainee, and PW3, a policeman with the Sengkurong Police Station. Both witnesses, however, gave conflicting accounts at various times during their testimony of having witnessed the detainee's assault by the accused. In PW1's case, he even admitted that if he gave favourable evidence for the prosecution, the police had agreed not to proceed with other pending offences against him.

Held, acquitting and discharging the accused of all charges:

(1) The only evidence against all four accused was based primarily on the evidence of PW1 and PW3. But their evidence was unworthy of credit. They were not truthful and credible witnesses (see para 192).

(2) There were conflicting and differing accounts between the prosecution witnesses of what allegedly happened in the investigation room and

A inconsistencies as to who was present in the room with the deceased at any particular time (see para 188(a)).

(3) There was no evidence to suggest the defendants had any intention or plan to physically abuse the deceased in order to make him talk (see para 188(e)).

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(4) The level of investigation in this case left much to be desired. Several statements recorded of witnesses went missing and were not available at the trial. To say the failure to send the nail scrapping, nail cutting, the defendants' shoes and to make imprint of the finger imprint on the neck and the shoe imprint on the body of the deceased for forensic analysis as an oversight on the part of the investigating officer was an understatement of the highest order given these were vital evidence which were available to determine a just outcome of the investigation (see paras 190–191).

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[Bahasa Malaysia summary

Tahanan polis, yang ditangkap atas disyaki mencuri, mendakwa diserang oleh pegawai-pegawai polis semasa di dalam tahanan dan meninggal dunia empat hari selepas penangkapannya akibat infeksi otak. Laporan autopsi menunjukkan dia mempunyai 61 kecederaan dan patah tiga tulang rusuk, bekas cap jari ditengkuk dan bekas tapak kaki di belakang badannya. Keempat-empat tertuduh didakwa bersama, antara lain, dengan menyerang tahanan. Di akhir kes pendakwaan, pihak pendakwaan mengaku ketidakupayaannya untuk membuktikan pelbagai tuduhan terhadap tertuduh. Mahkamah walau bagaimanapun memerintahkan kes prima facie dibuat berkaitan kedua-dua tuduhan — satu, secara sukarela menyebabkan kecederaan terhadap tahanan untuk tujuan mendapatkan pengakuan daripadanya, dan yang kedua, kerana menampar tahanan di mukanya. Kedua-dua kesalahan didakwa dilakukan di Bilik CID di Balai Polis Sengkurong sehari selepas tahanan ditangkap. Walaupun pihak pendakwaan memanggil 30 saksi, saksi-saksi utama mereka adalah PW1, 'accomplice' tahanan, dan PW3, anggota polis yang berkhidmat di Balai Polis Sengkurong. Kedua-dua saksi, walau bagaimanapun memberikan keterangan bercanggah pada masa berbeza semasa memberi keterangan yang mereka menyaksikan serangan ke atas tahanan oleh tertuduh. Dalam kes PW1, dia mengaku bahawa dia memberi keterangan yang memihak kepada pihak pendakwaan, anggota polis tersebut telah bersetuju untuk tidak meneruskan dengan kesalahan-kesalahan lain terhadapnya.

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Diputuskan, melepas dan membebaskan tertuduh terhadap kesemua tuduhan:

(1) Satu-satunya keterangan terhadap kempat-empat tertuduh hanyalah berdasarkan atas keterangan PW1 dan PW3. Tetapi keterangan mereka

tidak boleh dipercayai. Mereka tidak jujur dan bukan saksi-saksi yang boleh dipercayai (lihat perenggan 192).

(2) Terdapat keterangan yang bercanggah dan berbeza di antara saksi-saksi pihak pendakwaan mengenai apa yang didakwa terjadi di dalam bilik siasatan dan keterangan yang tidak konsisten mengenai siapa yang berada di dalam bilik tersebut bersama si mati pada bila-bila masa tertentu (lihat perenggan 188(a)).

(3) Tidak terdapat keterangan untuk mencadangkan defendan-defendan mempunyai apa-apa niat atau merancang untuk mencederakan si mati untuk membuatkan dia memberi keterangan (lihat perenggan 188(e)).

(4) Tahap siasatan dalam kes ini tidak memuaskan. Beberapa pernyataan yang diambil terhadap saksi-saksi hilang dan tidak terdapat semasa perbicaraan. Untuk menyatakan kegagalan untuk menghantar serpihan kuku, kuku, kasut defendan dan untuk membuat cap terhadap cap jari atas tengkuk dan kesan kasut atas badan si mati untuk analisa forensik sebagai kesilapan oleh pihak pegawai penyiasat adalah 'understatement of the highest order' memandangkan ini adalah keterangan penting yang ada untuk menentukan hasil siasatan yang adil (lihat perenggan 190–191).]

Notes

For cases on unsatisfactory conduct of police investigation, see 5(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 3025–3026.

Cases reffered to

Khoo Cheng Huat v PP [1991] 1 MLJ 42, HC (refd)
PP v Hj Hassan Tamit and Norhayati Abdullah [2003] JCBD 313 (refd)
R v Cowan and other appeals [1995] 4 All ER 939, CA (refd)
Tengku Mahmood v PP [1974] 1 MLJ 110 (refd)

Legislation referred to

Criminal Procedure Code s 221(5)
Evidence Act s 30
Penal Code ss 304(2), 304A(2), 323, 330

Nabil Daraina Pehin Badaruddin (Christopher Ng with him) (Deputy Public Prosecutor) for the public prosecutor.
Yusof Halim (Sankaran Halim) for the defendants.

Hairol Arni Majid J:

[1] The defendants were jointly charged with four counts, three of which being alternative charges whilst the fourth defendant faces a solitary second

alternative charge to the second charge. The main charges being the more serious ones are the first charge and it's alternative charge namely manslaughter under s 304(2) and s 304A(2) of the Penal Code chapter 22 respectively. At the end of the prosecution's case, the prosecution concedes it does not possess sufficient evidence to sustain the first charge, alternative to the first charge and the second charge and offer no further evidence and submission on the matter. As it stands, I ruled prima facie case against the remaining two alternative charges. The charges are as follows:

1st alternative to 2nd charge:

That all of you, sometime between 2008 hrs and 2105 hrs on the 22nd day of January 2009, at the CID Room, Sengkurong Police Station, in Brunei Darussalam, voluntarily caused hurt to one ABDUL RAHIM BIN ABDULLAH @TAN TONG HOCK (Male, 45 years old) for the purpose of extorting from the said ABDUL RAHIM BIN ABDULLAH @TAN TONG HOCK a confession, and you have thereby committed an offence punishable under Section 330 of the Penal Code, Chapter 22.

2nd alternative to 2nd charges:

That you, sometime between 2008 hrs and 2105 hrs on the 22nd day of January 2009, at the CID Room, Sengkurong Police Station, in Brunei Darussalam, voluntarily caused hurt to one ABDUL RAHIM BIN ABDULLAH @TAN TONG HOCK (Male, 45 years old) by slapping the victim in the face and you have thereby committed an offence punishable under Section 323 of the Penal Code, Chapter 22.

PROSECUTION'S CASE

[2] The mainstay of the prosecution's case rests on the evidence of Mohammad Saiful Rizal bin Hj Ismail, PW1 and PC Muhd Amir Shah bin Abdullah, PW3. The prosecution called 30 witnesses. The relevant evidence of the prosecution witnesses as regards to the remaining two charges is summarised as follows.

MD SAIFUL RIZAL HJ ISMAIL ('PW1')

[3] Saiful testified that he was arrested at his house at Kg Rimba by the second and the third defendants and later taken to Limau Manis Police Station. He said he was remanded at the station and investigated upon by the second and third defendant. He stated he was arrested for alleged theft at Kg Tanjung Bunut, Pengkalan Batu Mosque and a bungalow at Limau Manis. He admitted to the allegation and told D2 and D3 that he had an accomplice by the name Ah Hock ('the deceased').

[4] Saiful said he was then brought to Sengkurong Police Station by D1, D2,

D3 and D4. At the station, he was led into the investigation room. He said it was D1 who brought him to meet Ah Hock. At the meeting with Ah Hock, he said to him that it had been proved they were committed the theft and urged him to admit to it. Then he said D1 kicked Ah Hock who fell to the floor. He recalled at the time Ah Hock was handcuffed.

[5] Saiful said when he got out of the investigation room he saw D2 and D3 duly entered the room and 'mengerjakan' Ah Hock. He said when D1 kicked Ah Hock, the latter was seated to his right and D1 was in front of them. He said D1 stood up from his seat, walked passed in front of him and kicked Ah Hock on the stomach. He said D1 kicked Ah Hock because the latter did not want to admit. He said Ah Hock shouted and to him he looked to be in pain. Then he was instructed to go out of the room and asked to wait at the hallway. Then D1 left the room. He said D1 looked angry.

[6] When asked to clarify what he meant by 'mengerjakan' Ah Hock, Saiful said D2 and D3 kicked and hit him. Despite being at the hallway outside the room he was able to see D2 and D3 abusing Ah Hock by turning his head towards the room. Saiful said he saw D1 and D2 stepped on Ah Hock's stomach and this he said last less than five minutes. He saw Ah Hock's back leaning against the wall in the room still with his handcuffed on in pain.

[7] Saiful said he was then taken for fingerprinting and then led to a car. From inside the vehicle he claimed he saw Ah Hock at the garage hallway and D3 dragging him to the lock up. He said Ah Hock had to be dragged because he was not able to stand up as he was in pain.

[8] In cross-examination, Saiful confirms that he is currently serving sentence for an earlier convictions of theft related offences. He said he admitted to the police of his involvement in three theft related offence and not four as he had earlier indicated to the police. He admitted to being an accomplice along with other offender Arif, Hassan and Ah Hock.

[9] Saiful said sometimes ago he was involved in a self-accident resulting in head injuries and was diagnosed with a blood clot which affected his memory. He admitted to not feeling well in the course of the investigation on him at Limau Manis Police Station. Besides having difficult in remembering he said he regularly suffers from giddiness and headaches ever since his father passed away in 2002.

[10] He admitted that the police informed him that if he gives favourable evidence for the prosecution, his three pending offences would not be proceeded upon. He recalled being produced with Arif, his accomplice before the magistrate's court for three offences and the charges were not proceeded

upon. Saiful agreed with the suggestion by Mr Yusof that he agreed to be cooperative with the prosecution by giving evidence they want to hear in the hope he would not be charged.

[11] He said he was having a headache when he gave his evidence-in-chief. As regards his presence in the CID room on the 22 January 2009, he agrees with the suggestion that as a result of the headache, his memory of the incident the 22 January 2009 was defective. He said on the 22 January 2009, he was particularly under a lot of stress because he remembered the memories of his father's death and the incident of his family quarrel.

[12] Saiful said D2 and D3 had beaten him up at Limau Manis Police Station as well he claimed CID Bandar beat him up at Bandar Police Station. However, he said he made a second police report, MR/CR/81/2009, retracting his earlier police report of the allegation against the CID personnel who had assaulted him saying the report was false. As well, in this case, he said he had been forced by two personnel of the Unit Siasatan Khas ('USK') to make false allegations against D2 and 3 CID Bandar. He said he had made four statements to Unit Siasatan Khas in regards to this case, all of which were recorded by PC4930 Ak Saiful Rizal of Unit Siasatan Khas. He said Ak Saiful Rizal was one of the officers who came to his house and also the same person who had asked him to make a false report. He clarified that the allegation the story line, the date and time were all fed by Ak Saiful Rizal and all these are not true.

[13] Halfway through the cross-examination, Saiful said in evidence that his allegation that he had been assaulted by D2 and 3 CID Bandar was actually true and that he was forced to retract them by the CID personnel from Bandar. He said Ak Saiful Rizal came to his house and helped him with the detail of the retraction of the assault. He admitted to having a headache on the 22 January 2009 at the statement taking as such he relied on Ak Saiful Rizal to make the statement.

[14] Given his headache giddiness and the memory of his father, he admits to having little recollection of the event on the 22 January 2009 between 8pm and 9pm. He agrees with the suggestion that he could not recalled what actually happened inside the CID room on the evening between 8pm to 9pm on the 22 January 2009 and it was PC4390 Ak Saiful Rizal who suggested to him what has to be included in the statement. He said he agreed to it. He said he is fearful of Ak Saiful Rizal, Unit Siasatan Khas and as well CID Bandar of implicating them. He said he was fearful of Unit Siasatan Khas that he would implicate CID Bandar.

[15] At the conclusion of the cross-examination, Saiful said he recalled D2, D3 and PC Masri and another person taking him to Sengkurong Police Station

on the 22 January 2009. He said contrary to his earlier evidence in court, it was not D1 who brought him to investigation room to meet Ah Hock. He said D1 was already inside the investigation room. He could not recall who took him into the investigation room. He knows that the reason he was meeting Ah Hock was to identify him as his accomplice. He said he was feeling dizzy throughout the time he was in the investigation room and he had black vision while inside the room. Despite that he said he saw the assault. He saw Ah Hock being kicked. As soon as he got out of the room, D2 and D3 entered it with D1 already inside.

[16] He recalled he was already outside the investigation room when he turned back and saw D2 and D3 abusing Ah Hock. He said he was standing next to the door of the toilet room, which is near the investigation room. He recalled D1 going into the toilet washing his hands. He said D1, D2 and D3 were never in the investigation room together. When D1 went out of the said room, only then D2 and D3 went inside. He said D1 stood up from the chair and Ah Hock turned his body to the left and D1 kicked him. Saiful disagree with the suggestion that D1 could not have kicked with his right foot as D1 is left footed. He admitted to making confession of committing theft at Kg Junjongan and Kg Bunut. Despite the confession he was never charged with these charges.

[17] Saiful, however, agreed with the suggestion by Mr Yusuf that it would be physically impossible for him to look into the investigation room from the doorway of the toilet. Saiful added that, in fact, he was not able to see what happened in the investigation room after he exited out of it. At this stage of his testimony, Saiful says he is now willing to retract his earlier evidence in court in that he did not really see what transpired and happened between Ah Hock and D1.

[18] While on remand, he said he was recently visited by several people namely his sister, Norazlina, his brother-in-law, Supian Wahab. He was also visited by Mat Suny Hj Mohammad, PC3953 who works with CID Bandar. PC3953 is a friend of the CID Bandar who initially assaulted him. Saiful said PC3953 came to see him and attempted to persuade him not to reveal certain matters to the court and not to implicate him in court. Saiful said PC3953 appealed on behalf of his CID Bandar not to identify them at the identification parade for assaulting him. He said his conversation with the three of them lasted about 40 minutes to an hour. He admitted to discussing his evidence in court with them and PC3953 taught him what to say and not to say in his further evidence in court despite being reminded by the court not to do so.

[19] As regards his Berakas report alleging D2 assault on him, Saiful said he got the date, time and the storyline from Ak Saiful, who helped him with the

A statement. But he made another statement in Bandar Police Station initially on 1 April 2009 to retract the Berakas statement but it was transferred to Muara Police Station. At the Bandar Police Station he recalled PC3953 helped him out with the statement and asked him to retract his earlier one.

B **[20]** As regards his statement to the police on the 27 January 2009 (P12), he agreed to the suggestion that it was PC Ak Saiful Rizal who had told him about the assault on Ah Hock and he adopted it in his statement because before the statement taking he said he could not remember. He said had Ak Saiful not informed him of the incident, he said he would not have remembered.

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[21] At the end of the cross-examination, Saiful said, in fact, there were four persons inside the investigation room and another two CIDs outside the room. He said the number of people coming and going out the room confused him.
D He said there were Ah Hock, D1, D2, D3, himself and another two CIDs who came with D1 and D2. He said he was taken out of the investigation room by D1 and was led away from the room by PC Masri. He clarified that it appeared that his earlier evidence in court is wrong. He said D2 and D3 stepped on Ah Hock stomach once each. He said both D2 and D3 kicked Ah Hock as well. He
E said when D2 and D3 kicked Ah Hock, he was still in the room with them. Therefore, he said his earlier evidence that D2 and D3 went into the room after he and D1 left the room is not correct. He said, he also saw D2 and D3 kicked Ah Hock as he got out of the room.

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[22] He is adamant his previous evidence is correct but part of the answers he gave in his first statement especially to question 23 is not correct. He said D2 and D3 did actually kick Ah Hock but not CID Sengkurong. Despite his statements saying CID Sengkurong was involved, in kicking Ah Hock, it
G actually didn't happen. He said, at the time of making the statement, he had a headache, the main reason why he made a lot of mistakes in his statement. He said sometimes he can remember and at time he forgets.

[23] He said he also made a mistake in his second statement to the police
H P13, which was recorded on the 31 January 2009 when he stated he saw CID Sengkurong also assaulted Ah Hock. He said CID Sengkurong never assaulted Ah Hock.

[24] When he was brought by D1 to identity Ah Hock, he said the latter
I became angry and was shouting at him denying being his accomplice. He said he was taken out of the investigation room because Ah Hock was acting violently and was angry at him as a result D1 had to come between him and Ah Hock to stop the latter hitting him. Ah Hock continued to shout and was chasing him until D2 and D3 came to stop Ah Hock from leaving the room.

[25] In re-examination, Saiful said that he wishes to retract his earlier evidence in cross-examination, which suggests that he did not see D1 kicked Ah Hock, citing he had not understood Mr Yusof's questions earlier. By now, he was saying that he did see D1 kicked Ah Hock and D2 and D3 kicked him. Despite having giddiness, blacked vision and suffering from depression, Saiful said they did not impair him from seeing Ah Hock was being abused.

[26] As regards PC3953's visit, he clarified that the discussion with him was not related to this case rather to his assault case. As for his statement to Unit Siasatan Khas dated 27 January 2009 he said PC Ak. Saiful Rizal asked the questions and the answers in the statement were his words.

[27] As regards the incident in the investigation room, he said D1 kicked Ah Hock and the latter fell from the chair and was in pain. He said he did not know why he was brought in to see Ah Hock at that time. He said what he meant by 'mengerjakan' is that he saw D2 and D3 kicking repeatedly and stepping.

[28] Despite experiencing intense headache at the time on the 22 January 2009, it however did not effect his recollection. As regards his Berakas police report that, he said he was not really forced to make the report. He recalled two CIDs from Ong Sum Ping came to his house and instructed him to get in his car. They asked him if Bandar CID had assaulted him, to which he said yes. They then urged him to make a police report but he told them he needed time to think over but the CID personnel insisted that he should make the report that afternoon. In that sense, he felt he was forced to make the statement by that afternoon.

[29] As regards 'the Muara Report', he said another Bandar CID personnel came to see, asking him not to prolong the matter regarding his Berakas report. He knew the CID Bandar personnel wanted to cover up the matter and help their friends. He said when he made the statement at Muara PC Awg Sani, a Bandar CID was the one who had asked him to make lodge report to retract the Berakas report.

[30] He admits having his charges for theft related offences being *Nollei Prosequi* although he does not understand what it actually means. He said there were no promises made by the prosecution in the case or by anyone else for him to make a favourabe testimony. He said there was never any struggle between Ah Hock, D1 and D2 neither was there any attempt by Ah Hock to escape from the room.

PC MUHD AMIR SHAH BIN ABDULLAH ('PW3')

[31] PC Amir Shah had been working with the Royal Brunei Police Force for

more than 11 years and is currently attached with Sengkurong Police Station with the Patrol Unit Squad. Prior to April 2009, he said he was with the Sengkurong CID for about seven years. He said there were six of them including D4 in the Sengkurong CID headed by Inspector Kenny.

[32] On the 22 January 2009 around 7pm, he recalled seeing D1, D2 and D3 at the CID Sengkurong office, interrogating an arrestee inside the CID room. He said there is only one interrogation room at the Sengkurong CID office. At the time he said he was with his CID Sengkurong colleagues PC 490, WPC 5400 and D4 about to conduct an arrest in a case. They were in a room next to the interrogation room. He said he heard a noise from outside of their room, which prompted him to check. He went to the interrogation room and saw D1, D2, D3 and D4 inside with an arrestee. He recalls D3 standing facing the entrance of the interrogation room next to him. Once inside the room he said he saw D1, D2 and D4 interrogating the deceased. He doesn't know why D4 took part in the interrogation. He stated he saw D1 kicked the deceased although he does not remember how he did it. He also stated he saw D4 slapped the deceased using his hand. He said D4 slapped the arrestee on the face. As well, he said he saw D2 knocked the deceased's head to the wall. He saw he was inside the room for about two minutes. He then left the interrogation room and went to the CID computer room. When he left the interrogation room, they were still interrogating the deceased.

[33] He couldn't recall what the deceased was wearing at the time or whether he had his hand cuffed on. When he left the interrogation room, he remembers the deceased was still standing. He recalls seeing another arrestee outside the interrogating room standing near to the toilet door.

[34] Once inside the computer room, he said he contacted Insp Kenny to inquire whether they could leave the CID office as CID Limau Manis were using the interrogation room. He said they were allowed to leave the office and soon after left the CID office including D4. He said he did inquire with D4 of his participation in the interrogation. He did not inform Insp Kenny of it either.

[35] He said Unit Siasatan Khas investigated him in respect of Ah Hock's death and statements were recorded from him. He said when the assaults on the deceased took place, the D3 was inside the interrogation room and said D3 witnessed the incident.

[36] In cross-examination, he disagrees with suggestion that Unit Siasatan Khas personnel were escorting him every time he attends court. He admits he has a friend accompanying him to court that just happened to be working with

Unit Siasatan Khas. He disagrees with the suggestion that Unit Siasatan Khas members are in court to ensure that he does not depart from his evidence to the police.

[37] He said prior to December 2008, there was not yet established CID of Limau Manis. In fact, he said, there was only one CID unit of Jerudong consisting of both Sengkurong and Limau Manis. He said December 2008 saw the CID Jerudong being split into CID Limau Manis and CID Sengkurong. As a result of the split CID members of Sengkurong were split into two and he and D4 were assigned with CID Sengkurong.

[38] He disagrees with the suggestion that he had personal problem with D2 and D4 and that he was not in talking term with D2. He said in April 2009 he was transferred out from CID Sengkurong to the Patrol Unit. He disagrees with the suggestion that this was a demotion despite losing a $100 extra allowance. He disagrees that his transfer to the Uniform Section of the Patrol Unit was due to his disciplinary record. He said Sgt Bahar, Insp Amri and Cpl Yusran of Unit Siasatan Khas are his friend but denies any knowledge or being closed with the investigation of this case. He said he knew Sgt Bahar and Cpl Yusran were involved in the investigation of this case but he only met them when they were not working. He agrees that on all the occasion he was in court members of Unit Siasatan Khas were with him at the hearing although he claims they just happen to be his friends.

[39] As regards the D1, PC Amir Shah said he knew him as DSO of Limau Manis police station although he admits he does not know D1 very well. On the 22 January 2009, he met D1 at Sengkurong CID room. When asked to clarify what he meant when he said the defendants were interrogating a suspect he said that they were merely asking questions. He agrees with the suggestion that interrogation does not necessary mean beating up suspects. He concedes the fact that having seen the three defendants assaulted the deceased, he failed to stop or report the matter or made a complaint because he said he was only a PC and in comparison to the defendant he's quite junior in rank and since there was an inspector present he said he is not at liberty to take any action.

[40] After leaving the interrogation room and spoke to Insp Kenny over the phone he said it did not cross his mind to inform Insp Kenny of what he saw about the assault on Ah Hock. He said he went out of the station to investigate around 2030 hours with the rest of CID Sengkurong including D4 on the night of 22 January 2009. He said he was not angry of what D4 had done in the interrogation room at Sengkurong. Throughout the four hours with D4 he said it did not cross him mind to reprimand D4 for his assault on Ah Hock because he was shocked. The station diary did not record the CID Sengkurong activities that night because he said he forgot to do it. As well he said he forgot

to record the incident of the assault in his pocket diary. He said despite having seen many crimes, he is still in a state of shock even now of what had happened to Ah Hock.

[41] He disagrees at the suggestion by the defence that he had informed APO 6263 Harun Kahar, he had in his possession a can of poison in his car and was thinking of taking because he was mentally stress.

[42] He said he went out of the computer room of CID office because he heard noises and voices. He said the interrogation room was brightly lit and immediately saw D3. Asked by Mr Yusof of the sequence of event of how the assault unfolds, PC Amir Shah said he does not remember about it anymore and he's not sure about it now. He said he does not remember about the assault. He agrees with the suggestion that he has faint recollection of what he saw then.

[43] As regards the allegation of D2 knocking Ah Hock's head on to wall, he said at first he was not sure if it was a hard knock but subsequently said it was a soft knock to the back of the head although he could not remember how D2 did it. He admitted that he does not remember about it now. He said the wall at the interrogation room was actually made of gypsum board and any force on it would force the gypsum board to break.

[44] When asked to elaborate of how D1 alleged kicked Ah Hock, Amir Shah said he could not remember and has very little recollection of it now. As well he does not remember how D4 slapped Ah Hock. He said Ah Hock was standing through out the time he was inside the interrogation room. At no time did Ah Hock feel down after being assaulted. He said he did not say that the defendant had assaulted Ah Hock on account of attempting to get a confession from Ah Hock but only for information. He admits that his second statement to the police says he does not know the reason for the defendant assaulting Ah Hock. When put by Mr Yusof that his version of evidence in court is not true, PC Amir Shah answered may be and said he does not know.

[45] As regards to his statements to the police he agrees with the suggestion that his statement to the police given on the 1 February 2009 was not his first statement. He agrees that in fact it was his sixth statement on this case. He admitted that in his first statement to the police he stated he did not observe any assault on Ah Hock by the defendants.

[46] He said his statement on the 1 February 2009 was recorded as a witness although he said he had been arrested before that. He admits that in his earlier five other statements, he recorded that he did not see the assault on Ah Hock. He said when his sixth statement was taken on 1 February 2009, he felt pressured by the incident simply because he was in shock.

[47] As for the first ID Parade, he admits that despite D1 being present in the line up, he failed to identify him. He said he does not know the reason why had not see D1 at the ID Parade. As regards to the second ID Parade involving D2 and D4, he admitted picking them from the line and confirms what he said in the ID Parade form that he only saw them talking. He said he was still in shock when he said this during ID Parade. He said the defendants never threatened him before the ID Parade.

[48] As regards the third ID Parade on the 31 January 2009, he said he was able to pick D3 from the line he admitted saying then that he saw D3 inside the interrogation room interrogating Ah Hock. However, he said he never say D3 or himself witness the assault on Ah Hock.

[49] On the statements, he said he had made five statements prior to his sixth statement. He recalls making his second statement on the 31 February 2009, which was recorded during his arrest after the ID parade. He said he was detained for 48 hours in relation to the death of Ah Hock. He also admitted that when he was asked to identify the defendant at the ID parade, he was still under arrest and under investigation in relation to Ah Hock's death.

[50] He admits that in relation to his first statement on 26 January 2009 which he recorded himself, nothing in the statement that suggests he saw any assault in the interrogation room by the defendants. After giving the statement, he handed the same to the Unit Siasatan Khas member. The next day, on the 27 January 2009, he recorded another statement at Unit Siasatan Khas also recorded by himself regarding the event of the 22 January 2009 at Sengkurong CID room. Again, he said he did not see any assault. He handed the statement to member of the Unit Siasatan Khas. After that, he does not know what happened to the statement.

[51] He admits that Sgt Bahar did say to him that if he wanted to be a witness, he must say he actually witnessed the defendants assaulted Ah Hock. He said he was detained by Unit Siasatan Khas for 48 hours on 31 January 2009 and was supposed to be released on 2 February 2009. Referring to the Unit Siasatan Khas diary he admits to being released on 1 February 2009 around 2008 hours. Slightly earlier ie after having gave his statement on the 1 February 2009 ie the sixth statement.

[52] PC Amir Shah admits seeing a second detainee on the night of 22 January 2009 outside the interrogation room at the doorway of the toilet. And he agrees at he suggestion that at the point where the second detainee was standing in front of the toilet, it was impossible for him to see the interrogation room.

[53] In re-examination, Amir Shah said he still maintains his accusation against the defendant. He said he does not know why he keeps changing his mind. He said it is not true that Sgt Bahar and Unit Siasatan Khas personnel had pressured him into falsely accusing the defendant.

[54] He admits to having poison in his car, need killer and that it was not used for suicide although he admits that he did attempt at suicide before. He said the suicide attempt was not related to this case.

PC 5328 MOHD EFFANDY OTHMAN ('PW4')

[55] PC Effandy testified that he is the duty lock up sentry on the 22 January 2009 at the Sengkurong police station. He said he started his shift at midnight. When he came on duty that night took note of the condition of Ah Hock and stated he was normal as usual. Around 8pm that evening he said he saw D1, D2 and D3 and PC Masri at CID room Sengkurong. D1 then instructed him to take Ah Hock out of the lock up to CID room to be investigated. He and L/Cpl 3567 took Ah Hock from his cell to the CID room. He recalls Ah Hock looked healthy. Ah Hock had his handcuffed on and he said he had difficulty taking the cuff off Ah Hock and sought assistance from D4. He told CRO of the faulty handcuff and got a new one and handed the same to D3. He was also informed them instructed to bring Ah Hock to CRO. He stated he saw Ah Hock at the car park with the Prado car parked at the parking lot. At the parking lot, he saw Ah Hock leaning against the Prado hood in a weak condition. He and D3 brought Ah Hock to the lock up accompanied with PC 5230. He found Ah Hock to be weak and not able to stand on his own and kept saying his head hurts. When he asked D3 why Ah Hock was weak D3 replied that it's just his behaviour and not to believe him as he is a liar. When he resumes duty the next day he checked on Ah Hock and found him weak. He telephoned D1 to inform him of this.

[56] In cross-examination, he said he couldn't know if Ah Hock was really not able to walk. He admitted that his written statement to the police stated he did not examine Ah Hock, he merely looked at his head and it appeared normal. He said as soon as he informed D1 of Ah Hock's condition, D1 did not hesitate to send him to hospital.

PC 5297 HAMZAH HJ TARIP ('PW5')

[57] PC Hamzah testified that on the 22 January 2009, he was on duty from 2200 hours to 0600 hours as lock up sentry at Sengkurong Police Station. He said he had a checked on Ah Hock around 2230 hours. He found Ah Hock not yet asleep and complaining he was weak. He said throughout the whole morning Ah Hock kept complaining to him saying his body was weak and PC

Hamzah informed the CRO about it. When PC Hamzah resumed his duty at 2pm on the 23 January 2009, Ah Hock still complained he was weak. Having informed the CRO of this, CID Limau Manis personnel brought Ah Hock to hospital.

[58] On 24 January 2009 around 0740 hours and 0838 hours, he noticed Ah Hock had not taken his breakfast and left for court in a police car on a wheel chair. He said Ah Hock at that time was not able to stand up.

[59] In cross-examination, he was shown entries of the station diary made by PC 5328 on the 23 January 2009 at various times when PC 5328 was on duty, which states that Ah Hock was sleeping and in a good condition. When asked why his report seems to differ from PC 5328, he said he does not know why Ah Hock was weak on his watch, as he doesn't know what happened when he's not on duty.

[60] As regards the so called 'Buku Tahanan' on detention book, he admits he knows its existence but had not made any record in it despite it's his duty to do so. He admits PC 3567 and PC 5297 visited Ah Hock on the 22 January 2009. He agrees that when D1 and D2 also visited Ah Hock on the evening of the 22 January 2009, Ah Hock was sleeping and snoring. He agrees with the suggestion by Mr Yusof that various entries on the station diary where the words 'lemah-lemah' or weak were used were actually written on words, which had been tip-ex. He agrees that the words 'lemah-lemah' were written over the tip-ex part of the sentences at the various entries in the diary. He agrees that any amendment to any word in station diary such as here would amount to alteration and would be contrary to police general order. He said the correct procedure to amend a statement is to bracket the wrong words or word and to write the correct ones after it.

PC 4813 AZLAN HJ OSMAN ('PW6')

[61] PC Azlan works as a general duty lock up sentry at Sengkurong Police Station. He said on 23 January 2009 around 0600 hours on his routine inspection of Ah Hock he found him to have urinated in his sleep. On the 24 January 2009 around 1627 hours, he recalls seeing CID, Limau Manis personnel accompanying Ah Hock into the Sengkurong Police Station. He saw Ah Hock being dragged into the lock up. He inquired with the CIDs whether Ah Hock was sick. One of the CIDs replied to him saying Ah Hock wasn't sick, he's just being sneaky and claimed even the magistrate was conned into thinking he was sick.

[62] On the 25 January 2009 between 0600 hours and 1005 hours he saw Ah Hock was sleeping and snoring. It was around 1143 hours when PC Azlan

found him unconscious and white liquid coming out of his mouth. He immediately informed WPC 5453 Siti Rahmah bt Hassan of the matter.

[63] In cross-examination, PC Azlan said he didn't record in his pocket book the fact that Ah Hock had urinated in his sleep. He said at one time he had to clean the cell because it was smelly. He said he was not angry having to clean the cell. He said he does not know if other police officer had beaten Ah Hock.

[64] He said on the night of 24 January 2009 he was the one who changed Ah Hock's uniform from hospital to remand uniform. He had only managed to change Ah Hock's pant because he does not know where the uniform was. He said it's not true that he was trying to cover up the evidence of struggling by not revealing where Ah Hock's top was which would show evidence of struggling. He said he doesn't know if PC 4651 Adnan Hj Aji had threatened to beat up Ah Hock on the night.

[65] He admits Ah Hock on the night of the 24 January 2009 was without his top on. He did not report this matter to the CRO. As regards his pocket book he said he made entries regarding the incident based on the entries in the station diary. He said members of Unit Siasatan Khas seized the station diary in the afternoon of 25 January 2009. He made the entries in his pocket book based on the photocopies of the entries in the station diary. The same photocopy was also given to PC Shari and PC 5230 Faizal.

PC 5320 MOHD FAIZAL BIN AHMAD ('PW7')

[66] PC Faizal's testimony is simply that he was duty lock up sentry on the 21 January 2009 when D1, D2 and D3 brought in Ah Hock to Sengkurong police station. He inspected Ah Hock and found the latter to be in a good and healthy condition no bruises on his body. However, on 22 January 2001 around 2105 hours, he noted that Ah Hock was weak after having been brought from the CID room. He recalls Ah Hock was to be carried in that his body had to be lifted up and his legs dragging slightly off the ground.

PC 3327 SHARI KHAMIS ('PW8')

[67] PC Shari is the CRO of Sengkurong Police Station and has been working with the police for 12 years. He testified that on 22 January 2009 PC 5297 informed him about the condition of Ah Hock when the latter claimed to be in a weak condition. He said it is his duty to enter into the station diary any activities regarding the station including the condition of detainee. He said the entries in the station diary were made based on the information told to him by duty lock up sentry. On the 23 January 2009, he said PC 5297 informed him that Ah Hock was in a weak condition.

[68] He admitted that the various entries in the station diary, which states the defendant being 'lemah-lemah', were actually written over words, which had been tip-ex. He said he does not remember what the original words was that had been tip-ex over. He agrees that he's not allowed to do them. He did it anyway because he said it looks smart. Despite that he's adamant that the entries were correct.

[69] In cross-examination, PC Shari concedes that there should be a detainee book that records movements and activities of detainee in the lock up. He said there was one Ah Hock but Unit Siasatan Khas took the book. He accepts that it is actually the duty of CRO to check the condition of detainee and record of the handing over of detainee.

[70] He said as regards amendment to station diary, the correct procedure is to bracket the error and initialed it and to write the correct version after the bracket. He admitted correcting various entries in the station diary by putting down the word 'lemah lemah' or weak over certain words that had been tip-ex. He said those were done based on the information provided to him by duty lock up sentry. As far as the entries that had previously been tip-ex, he said he does not remember what they were. But as far as entries 89, 91 and 95 he concedes the original entries would have state 'keadaan baik' or good condition.

L/CPL 4140 HADAPI HIDUP ('PW9')

[71] L/Cpl Hadapi was working on 22 January 2009 as a photographer and in charge of fingerprints taking. He stated that he recorded the fingerprint of one Mohamad Saiful Rizal Ismail, a suspect, at Sengkurong police station. The accused was brought by PC 4534 Masri. The fingerprint taking started around 2100 hours.

[72] In cross-examination, he recalled D1 was present during the taking of the fingerprint of Mohamad Saiful because the suspect had only eight fingers and that there were slightly difficulties in the recording of the fingerprints. He maintained that the fingerprinting started at 2100 hours.

HJH ATIYYAH BT HJ ABAS ('PW11')

[73] Hjh Atiyyah works as a deputy public prosecutor assigned together with DPP Dk Hana Molina in the prosecution of Ah Hock before the magistrate court. In her testimony, she said prior to the mention of the case, she could hear Ah Hock coughing and looking unwell and weak. She heard DPP Dk Hana asked D1 why Ah Hock had a black eye and D1 replied that Ah Hock has

resisted arrest and had to be restrained by force. She inquired further whether Ah Hock was brought to hospital for examination to which D1 replied they already did.

[74] When the case was called, DPP Hjh Atiyyah applied to court for Ah Hock to be further remanded as the defendant's statement was yet to be recorded. Senior magistrate Faizal presiding over the case inquired how she was going to make Ah Hock talk since he had already refused to cooperate. She then sought D1 for assistance and D1 whispered to her that they would think of something. She said then D1 informed the court that they will try to make him talk. The remand application was granted and the court instructed Ah Hock to be sent to hospital for medical examination.

[75] In cross-examination, DPP Atiyyah clarifies that her statement to the police actually states that D1 told him detainee tried to escape not resisting arrest. She said the correct statement would be that D1 told him the detainee had attempted to escape.

DK HJH HANA MOLINA PG HJ MOHAMAD ('PW12')

[76] Dk Hana Molina works with the attorney general's chambers as a deputy public prosecutor. On the 24 January 2009, she said she was assisting DPP Atiyyah in a mention case before a magistrate court against a suspect name Ah Hock. She said D1 informed her that the suspect was in a wheel chair and refused to talk and walk. She then instructed that the suspect be brought to the courtroom without his wheel chair.

[77] While in court, she observed that the suspect, Ah Hock, was suffering physical injuries on his forehead some bruises near one of his eyes area and looked disheveled. When the case was mentioned, the court asked how DPP Atiyyah was going to make the suspect talk. Dk Hana then asked D1 to go to the bar table to assist DPP Atiyyah. D1 addressed the court saying they will try to make the suspect talk.

[78] In cross-examination, she confirmed D1 had in fact told him the detainee had attempted to escape.

SENIOR MAGISTRATE MUHAMMED FAISAL BIN PDJLD DSP HJ KEFLI ('PW13')

[79] Senior magistrate Faisal testified that he presided over the mention of the case against the deceased Ah Hock on the 24 January 2009. He states that Ah Hock appeared unrepresented and the prosecution then applied for him to

be further remanded to which the senior magistrate Faisal inquired as to the progress of the investigation to and the DPP informed the court that Ah Hock had refused to be interviewed and nothing much had been done. The DPP addressed the court saying the police will find a way to make him talk. He said D1 had in fact addressed the court in reply to his query but he ignored D1's answer and his query was meant for the DPP. He had only recorded in his notes what was actually said by the DPP. Senior magistrate Faisal informed the court that if what the DPP said by saying the police will find a way to make him talk in anyway suggest that the police will act illegally against Ah Hock, he would have inquired with the DPP further. In this case he did not inquire further.

SUPT MATUSIN HJ ISMAIL (PW14)

[80] Supt Matusin is the investigating officer (IO) in this case. He testified that on the 25 January 2009 around 1645 hours, he instructed the CID Limau Manis and Sengkurong Police Station as well as personnel from the Sengkurong Police Station to be called to Unit Siasatan Khas at Ong Sum Ping for statement taking. Around 1800 hours, he instructed the Crime Scene Unit to process the scene of incident and for the defendants' blood and nail clipping samples to be taken.

[81] He said the autopsy of the deceased Ah Hock was conducted on 26 January 2009. At the request of the Commissioner of Police, a second autopsy was to be done by a pathologist from abroad. He said around 1915 hours on the 26 January 2009, he recorded the statement of D1. At 1608 hours on 27 January 2009 he received instruction from deputy head of crime to release the five CID Limau Manis in that they'll be allowed to go home. He said the five CIDs from Limau Manis and D4 were detained again on the 31 January 2009 for further investigation and notice of warning statements were recorded from them. Upon the instruction of deputy head of crime, they were to be locked up at the police station in a separate cell.

[82] He said he received all the exhibits of the case including the swabs and blood samples and 11 FTA cards with 12 envelopes contain nails crapping from Cpl 2944 Nurul Ruzaini at the Berakas airport to be brought to Singapore for analysis. He received the DNA analysis report from Singapore on the 6 March 2009.

[83] In cross-examination, Supt Matusin said Sgt Bahar was the assistant investigation officer on the case. As well, he had Cpl Hj Yusra and PC Ak Saiful Rizal in his team. He confirms that Sgt Bahar, PC Saiful Rizal, Senior Insp Redzuan are also being charged in court for assaulting a witness in order to extract a confession and assault under s 330 and s 323 of the Penal Code respectively.

[84] He agrees that all the defendants being CID are not investigation officers and their functions are not to record statement from suspects. He said there was no evidence in his investigation to suggest that the defendants attempted to record statement of Ah Hock throughout the time he was detained. He said at the initial stage of investigation six persons were arrested in this case namely the defendants, L/Cpl Masri and APO Harun.

[85] He said his instruction was to detain the defendants for 48 hours to assist investigation. They were not to receive visitors during that time. He said PC 3397 Amir Shah was also detained as a suspect and had given five statements to the police prior to his statement on 1 February 2009. He said he knows PC Amir Shah was an eyewitness to the alleged incident.

[86] As regards the statement recorded from PC Amir Shah on the 27 January 2009, Supt Matusin said he does not know where the statement is now because he only instructed the statements to be taken. He agrees that despite being instructed to be detained for 48 hours, PC Amir Shah was released a day earlier on 1 February 2009 at 8pm. He confirms that PC Amir Shah's statement on 26 January 2009 stated he did not see anything in the CID room at the time of the alleged incident and his other statement taken on 27 January 2009 was missing. He said PC Amir Shah changed his mind in his 1 February 2009 statement saying he saw the defendants assaulting Ah Hock.

[87] As regards the remand shirt of the deceased, he said he does not know what happened to it. He agrees that three remand pants and one remand shirt belonging to the deceased were seized. He is adamant that the missing remand shirt belonging to the deceased at time of his death is vital in finding the real assailant of the deceased.

[88] He said there was no record of all the defendants meeting up with the deceased after 24 January 2009 at the lock up. He agrees that there was evidence of a threat by PC 4651 Adnan Hj Aji a lock up sentry on the evening of the 24 January 2009. PC Adnan was also the lock up sentry on duty from 10 pm onward until the 25 January 2009. He said PC Adnan was not a suspect only a witness. Supt Matusin said post mortem report shows that the deceased suffered fracture of ribs after the 24 January 2009 when he was in the lock up. He said on the 26 January 2009 he ordered searches into the defendants' houses to look for shoes wore by the defendants. He said only four shoes belonging to the defendants were taken. He said this was done because on the deceased anal cleverages there was found something that rumble a shoe print. But no cast was made of this impression. He said he did not order any scientific or forensic comparison of the defendants shoes imprint to the impression on the deceased body because having consulted Crime Scene Unit and Dr Telesinghe, it is difficult to make casting of the shoe imprint.

[89] He admits the fact that there was allegation that the deceased was stamp and kicked on his body with his remand shirt or top on. But he said he failed to look further into the matter despite the probability that it could have happened as alleged. He accepts as well that they were possibility that the deceased was kicked without his top on which explains the shoe imprint on the body. But he said he did not pursue this matter further.

[90] He said he also directed for nail clippings of the four defendants to be taken to determine the presence of decease tissue and DNA. He also instructed for nail clipping of the deceased to be taken but no forensic analyses were done on them. He said Singapore Forensic Laboratory did not conduct an examination on then after consulting Dr Christopher, a specialist forensic from Singapore.

[91] As far as the deceased nail clippings he said they were supposed to be sent to Singapore but found that they were not annexed with the request for examination in Singapore. He said he only found out recently when he spoke to the exhibit officer. He confirms that he also instructed for blood sample of PC Adnan Hj Aji and nail clippings of the defendants, PC Harun and PC Masri. There were also not sent for forensic comparison analysis.

[92] He said as regards the deceased Ah Hock, he was informed that Ah Hock was a habitual offender and the feedback he got from Insp Ismail and Hj Kasah was that Ah Hock is known for his antics of refusing to talk and cooperate with the police.

[93] As regards the Sengkurong Police Station dairy, Supt Matusin agrees that it is against police general order to tip-ex diary. He investigated the wall inside the investigation room of CID office and confirms that the wall of the rooms were made of gypsum board and upon his investigation, he did not see any dent on the wall in the investigation room.

[94] Supt Matusin agrees that Saiful Rizal did say in his statement recorded on the 25 January 2009 that he did not see anything at the CDD room because he had blood clot in his head and that he was depressed. But he does not know what happened to the statement. As far as Saiful Rizal earlier statement on 30 January 2009, he said he does not know who instructed PC Amir Shah to record his statement. He admits it is quite improper for PC Amir Shah to record statement of Saiful Rizal as both are eyewitnesses to the alleged assault incident.

SGT 2442 BAHAR HJ DAMIT ('PW15')

[95] Sgt Bahar was the assistant investigating officer in this case. His initial

investigation into this matter came about when he interviewed D1, D2, D3, PC Masri, APO Harun in the CID Sengkurong meeting room. As a result of this initial investigation, he ordered the D2, D3, PC Masri and APO Harun to give their statements separately at Unit Siasatan Khas office at Ong Sum Ping on 25 January 2009. On the 26 January 2009, he recorded fourth statement of PC 4534 Masri. The next day on the 27 January 2009 around 1027 hours, he interviewed PC 3997 Amir Shah, D4, PC 4090 Sufian Kalong, WPC 5155 Ruslin and WPC 5400 Ainie in his office at Unit Siasatan Khas and instructed them to record their own statements were informed that their further statements would be taken by Unit Siasatan Khas officers.

[96] In cross-examination, he said he does not know what happened to statement given by PC Amir Shah although he recalled it being to him. He said he read it and handed the same to the Supt Matusin. He has no explanation of how PC Amir Shah's statement had gone missing.

PC 2944 NURUL RUZAINI MUHAMMAD ('PW16')

[97] PC Nurul Ruzaini is the exhibit officer in this case. Her role was simply to gather the exhibits and marked the items for ease of identification and for scientific and medical examination. She is the custodian of the exhibits and records the movements of the items.

[98] The substance of her testimony is that the nail scrapping of the deceased Ah Hock which was amongst the recorded exhibits was not send for analysis to Singapore despite the fact she had brought it to the attention of investigating officer. She said until today she still has it with her. Also she confirms that the defendants' shoes were not sent to Singapore for analysis and to date no examination were conducted on them.

PC 4090 MD SUFIAN HJ KALONG ('PW18')

[99] PC Sufian works as a CID Personnel with the Sengkurong Police Station. He testified that on the evening of 22 January 2009 around 2000 hours, he was with PC 3997, D4 and WPC 5400 at the computer room of Sengkurong CID office waiting for WPC 5155 Ruslin Gaing. He said he saw D2 next to the computer room. Looking into the investigation room he also saw D1 with a detainee Ah Hock inside. He said he saw D1 talking to Ah Hock. Then he said he went out of the office to smoke.

[100] On his way back to the computer room he saw D1, D2 and D4 talking to the detainee Ah Hock. They were standing while PC 3997 Amir Shah was sitting on a chair next to the door of the interrogation room with D4 standing next to PC 3997 Amir Shah.

[101] Initially he said he saw two detainees one being Ah Hock and the other Saiful Rizal. Saiful Rizal was not in the room; he was outside the investigation room. He said when he saw PC Amir Shah inside the investigation room he only observed that the defendants were only talking to Ah Hock. He said he had known PC Amir Shah for ten years and he agrees that PC Amir Shah bear a grudge against D2 and both were not on talking term only with another.

WPC 5155 RUSLIN BTE GAING ('PW19')

[102] WPC Ruslin is a member of Sengkurong CID. She testified that on 22 January 2009 around 2020 hours, she was at the Sengkurong CID office heading towards the computer room when she heard voices of people talking. She had a look at the investigation room and saw D3 investigating a detainee Ah Hock. She confirms there was no struggle going on.

[103] When she reached the computer room she said her Sengkurong CID colleagues PC 3997 Amir Shah, PC 4990, D4 and WPC 5400 were waiting for her. Soon after that they left the office to investigate and were back at the office around 0130 hours on the 23 January 2009.

[104] She observed that when D3 was with Ah Hock in the investigation room, Ah Hock looked normal and quiet and didn't say anything. WPC Ruslin recalls changing the set up of the investigation room a few days after that. She said she was cleaning the room together with D4 and WPC Ainie and rearranged the room.

WPC 5400 AINIE BT YUNOS/NUDIN ('PW20')

[105] WPC Ainie is a member ot Sengkurong CID Unit. She recalls on the evening of 22 January 2009 around 1800 hours she was at CID office at Sengkurong Police Station to meet her other CID Sengkurong colleagues. She met D1 outside the interrogation room and informed her they wanted to use the interrogation room. She then went to the computer room when she met her colleague PC Amir Shah PC 4090, D4 who were already at the room. While waiting for another member of her group she went to the toilet. On the way she saw D1, D2, D3 and D4 interrogating Ah Hock in the interrogation room. She heard a loud voice. She said another detainee was also outside the interrogation room with a lock up sentry PC 5328.

[106] Coming out of the toilet, she said she saw PC Amir Shah went into the interrogation room and sat on a chair. She then went back to the computer room. As soon as WPC 5155 arrived, they went off the CID office to conduct their investigation.

[107] In cross-examination, she said she does not recognize whom it was who had spoken with the loud voice. She recognised Ah Hock inside the interrogation room and there was another detainee outside the room who is Malay. She said all the defendants were standing inside the interrogation room except for PC Amir Shah who was sitting on a chair.

L/CPL 3871 MASLEY HJ SISA ('PW21')

[108] L/Cpl Masley was in charged as CRO on the 24 January 2009 from 0000 hours till 0200 hours at Sengkurong Police Station. He said throughout his short stint on duty, there were no complaints or problems report by the sentry lock up about the detainee Ah Hock. He said he did not personally check on the detainee but rely on the report given to him by sentry lock up. He said the detainee while on remand should be given remand clothing to wear comprising of orange long pant and shirt. He confirms that he was the CRO on duty when Ah Hock was found dead. He said the station diary would record if any detainee were not given full remand clothing. As for the entries that morning, nothing was recorded to suggest that Ah Hock was not wearing full remand uniform. He said he would be informed if detainee was not given or wearing full uniform and he expects that duty sentry lock up to inform him of this.

[109] In cross-examination, he said he had delegated the responsibility of ensuring that Ah Hock be given full remand uniform to PC 4651 Adnan Hj Aji, a lock up sentry. He said he could remember if PC Adnan had come to see him to inform that Ah Hock was not given full remand uniform. PC Adnan never informed him that Ah Hock was not in full uniform.

[110] He admits that he was with PC Adnan in front of the lock up around 0145 to 0214 hours on the morning of 25 January 2009. He said he was standing beside PC Adnan. He said he was with PC Adnan for about 30 minutes chatting. He disagrees that PC Adnan told him Ah Hock had no shirt.

[111] He admits that based on the statement of PC Adnan, PC 5309 Khairul Anuar came back to the lock up after having finished his shift. He did not know PC Khairul Anuar was back at the lock until he saw PC Adnan statement. He said he would have asked PC Khairul Anuar to leave if he had known he was at the lock up. He said PC Adnan did not inform of PC Khairul Anuar presence in the lock up.

[112] He disagrees with the suggestion that he heard a conversation between PC Adnan and PC Mulyadi saying that they had doused Ah Hock with water during his duty as CRO. He said he did not cover up the incident of PC Khairul Anuar presence at the lock up because he said he didn't know of it. He

said he doesn't know if PC Adnan Hj Aji had threatened to beat up Ah Hock on the 25 January 2009.

PC 5309 KHAIRUL ANUAR HUSSIN ('PW22')

[113] PC Khairul Anuar worked as a Sengkurong Police Station sentry for year in 2009. He recalls seeing Ah Hock being brought to RIPAS Hospital by CID Limau Manis on the 24 January 2009 around 1400 hours in a van and as well when he returned from hospital around 1600 hours. On Ah Hock's returned from hospital, he said he saw Ah Hock having difficulty walking and was assisted by being carried of D3 and one PC 4534 to the lock up.

[114] Around 2126 hours the same day he said he was ordered to take the command as CRO until 2200 hours. He said it was reported to him by PC 4803 that the detainee Ah Hock refused to eat and he informed D3 of this and recorded this inside the station diary. He said it was lock up sentry PC 4803 and WPC 5453 who informed him of Ah Hock refusal to eat.

[115] He said he was back on duty the next day on 25 January 2009 at 0600 hours. He disagreed at the suggestion that he came back to the lock up on 0215 hours on the early morning of 25 January 2009. Having been shown PC Adnan Hj Aji's statement stating otherwise, he said PC Adnan was wrong and not telling the truth in the statement. He said he had no reason to come back again to the lock up having ended his shift at 2200 hours earlier. He disagrees at the suggestion that he was at the lock up and said PC Adnan Hj Aji beat up Ah Hock in the morning of the 25 January 2009. It was put to him that he actually saw PC Adnan and PC Mulyadi hosed down Ah Hock that morning which he disagrees.

PC 4283 MULYADI HJ SUHAILI ('PW23')

[116] PC Mulyadi worked as a CRO at the Sengkurong Police Station in January 2009. The relevant part of his testimony is that on the 24 January 2009 he was the duty CRO at the station with PC 5051 Md Azri and PC 4651 Adnan Hj Aji as lock up sentry on duty. Throughout the night and morning between 2200 hours until 0600 hours the next day PC Adnan reported to him that Ah Hock was healthy sleeping and did not complain of any pain.

[117] In cross-examination, he said on the 25 January 2009, he did not visit or had a look at Ah Hock at the cell because he was on duty and was at the CRO office. He said PC Adnan did not report to him about Ah Hock not wearing remand uniform. He said he did not know PC Adnan had left his post to talk

to PC Sofian.

PC 4651 ADNAN HJ AJI ('PW24')

[118] PC Adnan worked as a temporary lock up sentry at Sengkurong Police Station on 22 January 2009 and 24 January 2009. The relevant part of his testimony is that on the evening of 24 January 2009 he started his duty around 2200 hours. PC 4803 informed him that the detainee had accidentally urinated in the lock up and they had to clean it up. He said as he resumed his duty he had a checked on Ah Hock who at the time was asleep. He woke him up and asked him of his condition. Ah Hock replied to him saying he was tired, weak sleepy and wants to sleep. He said he advised Ah Hock to eat his meal but Ah Hock refused and told him he would take it later as he was tired.

[119] He said throughout Ah Hock was in a good condition and did not complain of any pain. He then met D1 and D2 and informed them the detainee urinated in his cell and inquired whether they are going to bring him to hospital. They informed him they had brought Ah Hock to hospital twice but found nothing wrong with him. He said D2 told him Ah Hock 'is a little sneaky'. He said he went to the lock up to check on Ah Hock and asked him if he was all right. Ah Hock responded saying 'yes'.

[120] He said around 0145 hours on 25 January 2009 L/Cpl 3871 came to the lock up for chitchat. Then both of them went out of the lock up and continue with their conversation. Around 0215 hours he said he had a chat with PC 5051 Azri outside the lock up. He said the last time he spoke to Ah Hock was at 0545 hours when he entered the lock up to speak to Ah Hock and the latter responded.

[121] In cross-examination, he disagrees at the suggestion that he informed D2 he was going to beat up Ah Hock and hurt him. He denied had hosed down Ah Hock in his cell. He denied having assaulted Ah Hock disposed off Ah Hock's shirt for fear it would reveal vital evidence of how Ah Hock died. He said he did not hear Ah Hock shouted for help or in pain in the early morning of 25 January 2009. He denied ever assaulting Ah Hock at anytime.

[122] He said he knows D2 and D3 as he worked with them and never had any problem with them before. He said the remand uniform generally provided for the detainees is not necessarily for their 'well being'. He explains that the remand uniform worn by the detainees would be taken out as soon as they entered the cell or lock up. He is adamant that the remand uniform was only to be worn when detainees are outside the cell. He said there is no requirement to record on the station diary if remand uniform is taken out. But there is a

requirement to record in the station diary if the detainee leaves his cell to go to the toilet. He said he is familiar with the police general order and standard operating procedure.

[123] He disagrees that there is a requirement to record in the station diary if any detainee is not wearing remand uniform or any part of it. He said the correct procedure is detainees under remand are not required to wear remand uniform.

[124] He denied having difficulty guarding Ah Hock and threatening to assault him. He disagrees at the suggestion that he was angry with Ah Hock at urinating in the cell. He admits he was upset about it. He denies his nails sample were taken by Unit Siasatan Khas. He said Unit Siasatan Khas only took his blood sample.

[125] He denied going with a violent rampage and attacked Ah Hock in his cell angry because he had urinated in his cell and stole from the mosque. He denied hosing down Ah Hock with PC Mulyadi also taking part.

PC 4534 MASRI METASSAN ('PW26')

[126] PC Masri was offered to the defence for cross-examination without the prosecution examining the witness in chief. He said he was part of the team with D1, D2 and D3 as CID of Limau Manis Police Station. He recalls on the night of the 22 January 2009 he was with D1, D2 and D3 at Sengkurong Police Station. He said he did not go into the CID office immediately but instead went to a shop opposite the Sengkurong Police Station. He then went to the CID office and in the hallway of the office he met D1 as the latter was coming out of the toilet. He said D1 instructed him to bring Saiful Rizal, a detainee who was standing outside the toilet room for fingerprints taking. He recalls Saiful Rizal wearing an orange remand uniform. He said standing next to where Saiful Rizal was, he said he was not be able to see the inside of the interrogation room because it was far away. He said Saiful Rizal standing was next to the red carpet and he is adamant that Saiful Rizal would not be able to see inside the interrogation room. He said as he was going to the investigation room for fingerprinting, he recalls D1 was following him from behind. D1 was present during the fingerprint taking of Saiful Rizal, which was conducted by L/Cpl Hadapi.

[127] As regards PC Amir Shah, he recalls taking to him before PC Amir Shah gave his statement to Unit Siasatan Khas. PC Masri said PC Amir Shah inquired with him how to make a statement. He said this conversation took place at CID room at Unit Siasatan Khas Ong Sum Ping.

[128] PC Amir Shah told him that he was forced to make a false statement to accuse D1, D2 and D3 by Supt Matusin and Sgt Bahar. He said PC Amir Shah told him if he refused to do so, Supt Matusin and Sgt Bahar would accuse him instead.

[129] As regards his first statement to the police, he said he did not see anything of the alleged incident on the 22 January 2009. But he said his second statement states he saw D1, D2 and D3 and a few CID Sengkurong interrogating Ah Hock but he admits that the second statement was not his words despite he initialed it. He said Sgt Bahar fabricated the second statement. He said he was given no choice. He confirms that his first statement was not fabricated.

APO 6263 HARUN ABD KAHAR ('PW27')

[130] APO Harun was also offered by the prosecution for cross-examination. APO Harun testified that he was in the same CID team as the D1, D2 and D3. He recalls being called to Unit Siasatan Khas Ong Sum Ping building for investigation in relation to the death of Ah Hock. He said on the occasion he was at Unit Siasatan Khas Ong Sum Ping he saw PC Amir Shah hugging D2 at the same time apologising to him for accusing him and the team. He recalls PC Amir Shah crying saying to D2 that he had no choice but to falsely accuse them otherwise he would be accused instead. He said he was not sure who PC Amir Shah meant had asked him to accused D1, D2 and D3.

MEDICAL TESTIMONY

Dr Lim Hock Sing ('PW28')

[131] In his testimony Dr Lim said he examined Tan Kong Hock @Ah Hock when the police brought the detainee on the 23 January 2009. He said Ah Hock was complaining of pain in his head, abdomen and thigh. He said Ah Hock was brought in also for blood and urine taking. Having examined Ah Hock, he found superficial bruises on his abdomen and on his right wrist although his heard sound and lungs was normal.

[132] Dr Lim asked Ah Hock how he got the bruise but he said he did not reply. He said blunt trauma or objects caused the bruises. He said he noted the detainee had several fingers deformity due to amputation. He saw superficial bruising on the detainee's abdomen around the umbilical region.

[133] In cross-examination, Dr Lim says he was not able to determine the age of these bruises on the detainee. He confirms that when he examined the detainee on the 23 January 2009, there was no clinical indication that he was

suffering from fractured ribs. If the detainee was at the time suffering from three broken ribs, he said he would have found out, as the detainee would be in pain. His examination did not indicate or show any sign that Ah Hock was suffering from stroke because it would have shown eg weaken of body, unstable gait, reduce level of consciousness and slurred speech. But he said none of these signs were found on the detainee. He said he did not prescribe any medication for Ah Hock. He said his medical finding saw no necessity for Ah Hock to be admitted in the hospital or to prescribe medication. He opined that superficial bruising would not be able to cause death.

Dr Eddy Ngatemo ('PW29')

[134] Dr Eddy works with RIPAS Hospital at the Accident and Emergency Unit. He testified that on the 24 January 2009 he examined Ah Hock who was wearing a remand uniform. He said Ah Hock was complaining of pain over his body. Upon re-examination he found Ah Hock to be alerted and orientated and was able to tell his history. He found bruises on Ah Hock below the left eyes, the temperal area, and the left chest at the nipple area, right hand, right wrist and left wrist. As well, he noticed Ah Hock right index finger already amputated. Dr Eddy say Ah Hock informed him he was beaten up when he was arrested. He also informed Dr Eddy that he was also examined at RIPAS Hospital the day before on the 23 January 2009.

[135] Dr Eddy said he examined Ah Hock's lung, heart and tummy and found them to be harmed. He did chest and skull X-ray on the patient and as well blood examination. He said at the time of the examination he did not have the benefit of previous clinical notes of the patient. He gave him with an injection of painkiller. Upon discharged, he gave Ah Hock voltaren, antacid and voltaren gel. Prior to discharging Ah Hock, Dr Eddy had the X-ray and blood investigation result, which suggest that Ah Hock did not show any fracture in his body and his blood investigation was stable. He said after discussing the result with his seniors, they were happy to send him back with follow up for his anaemia.

[136] It was found that Ah Hock blood cell was low with a reading of 9.3. But despite that Dr Eddy opined that it was quite stable for the patient. As regards the bruises he opined that they were superficial bruises caused by blunt objects. He said Ah Hock left the Accident and Emergency Unit in a good condition the reason why he discharged him.

[137] In cross-examination, Dr Eddy said Ah Hock did not inform him who had beaten him up. He said he would not release Ah Hock if he believes that the police who escorted him had tortured him. He said four X-rays were taken on the patient and none revealed any fractured. He agrees with the suggestion that

when Ah Hock was X-rayed on the 25 January 2009 after he was found dead, it was only usual conclusion that the fractured happened after the 24 January 2009 after he examined the patient.

Dr PU Telesinghe ('PW30')

[138] Dr Telesinghe is a specialist pathologist at RIPAS Hospital who conducted an autopsy on the deceased, Ah Hock. In his testimony he opined that Ah Hock died three or four hours before 1.15 pm on the 25 January 2009. Having sight of the clinical note of Ah Hock earlier examination, Dr Telesinghe noted all the injuries sighted earlier. He said his autopsy rules that Ah Hock died of infection of the brain. He said that there were already impeding signs when the examination were done on him on the 23 and the 24 January 2009 namely the deceased had a pulse of 76 couple with complain of headache which would put pressure on the brain. He noted that on the examination on the 23 January 2009 the deceased pulse was 51.

[139] As regarding the injuries, Dr Telesinghe said that they were difficult to determine interim of age of the injuries. He said he concurs with the earlier finding of Dr Eddy of the X-ray on the deceased on the 23 January 2009 that there were no fractures seen on the deceased. He opined that had CT-scan been done on the deceased head, he believes swelling of the brain would have been recorded.

[140] Dr Telesinghe said the deceased had a history of health problem dating back to 1995 when he fractured his collarbone in a serious road traffic accident. As a result the deceased had damaged his main blood vessel on his right hand. In 2008 the tip of two of his fingers developed gangrene and was operated upon. The deceased also had surgery to graft a blood vessel from the back of his neck to his arm to ensure sufficient and proper blood supply. He opined that the natural consequences is that if the blood supply to the mid-brain is cut off then there would be haemorrage in the mid-brain which is consistent with the swelling of the brain. He opined that the blood clot could be caused by the failure to supply blood to the brain. In Ah Hock's case some of the grafting was under the neck. Dr Telesinghe opined that it can get dislodge on its own or by movement of the neck or even if the deceased simply rubs his neck, it can get dislodged.

[141] In cross-examination, Dr Telesinghe agrees that a clot could dislodge naturally. Given the decease had a Teflon graft he opines that it is more susceptible to blood clotting. His post mortem finds that a lot of the blood clot was at the graft side.

[142] He said when the second post mortem conducted by Dr George Paul

on the deceased he was also present. He concurs with Dr George Paul's finding that the visual description of the graft side shows a lot of clots. Dr Telesinghe explained that this was due to the fact that the deceased was not prescribed with warfarin. He said since October 2008, the deceased had not been back to be monitored by RIPAS Hospital or for that matter the deceased was never prescribed with warfarin.

[143] Dr Telesinghe found fingerprint mark on the neck on the side of the larynx. He opined that this could well be the fingerprint of the assailant. He said he pointed this out to Supt Matusin and as well the possibility that the linear abrasion on the neck could be a nail mark. He told Supt Matusin that someone might have held the deceased neck. As regards the imprint on the back of the deceased, he opined that it is a footprint or heel mark and he said he informed this to Supt Matusin. He opined that the print could be the assailants as it could not be self-inflicted.

THE DEFENCE CASE

[144] The third defendant elected to remain silent while the other three elected to give a sworn testimony. The summary of their testimonies is as follows:

Inspector Hj Azwan Bin Dato Paduka Seri Hj Abdul Rahman ('DW1')

[145] Inspector Azwan in his testimony states that the deceased, Ah Hock was arrested around 1938 hours on the 21 January 2009. He was informed that Ah Hock @ Abd Rahim was arrested only after a struggle. His initial investigation uncovered that Ah Hock had been arrested on many previous occasions and CID Bandar Police Station informed him that the arrestee was a scheming suspect and as such would pretend to be sick and urine in his pants whenever he is detained. He duly informed his men of this.

[146] At Limau Manis Police Station, he said he investigated on and questioned Ah Hock but the latter remained highly uncooperative and had attempted to run out of the room. He said Ah Hock was aggressive and tried to hurt one of the CID members. He said they managed to calm the situation down and prevented Ah Hock from running away. Ah Hock was brought to Sengkurong Police Station later in the evening.

[147] On the 22 January 2009, he said he and member of his CID Limau Manis brought Saiful Rizal another suspect to have been involved in the various theft cases including the theft as Limau Manis Mosque to Sengkurong Police Station. He said Saiful Rizal was brought to Sengkurong Police Station to meet Ah Hock only for the purpose of Saiful identifying Ah Hock whether in fact Ah

Hock was his accomplice as was stated in his statement. Insp Azwan said Saiful Rizal was brought to the investigation room of the CID office at Sengkurong. He said he couldn't recall who had brought Saiful Rizal into the investigation room leaving only himself, Saiful Rizal and Ah Hock in the room. He said PC 4488 Pg Asmanuddin D4, entered the investigation room and started to ask Ah Hock a few questions regarding a case he was handling. He said he stopped D4 from asking questions and to D4 that he merely wanted Saiful Rizal to identify Ah Hock and D4 at the investigation room.

[148] He said Saiful Rizal identified Ah Hock as his accomplice and this caused Ah Hock to get angry and started shouting and became violent towards Saiful Rizal. He said he took Saiful Rizal out of the investigation room to prevent Ah Hock's attack on Saiful Rizal. He said as he was leaving the room with Saiful Rizal, Ah Hock tried to run after Saiful Rizal causing a commotion. This caused L/Cpl 3567 Sofian, D2 and PC 4482 Andrew, D3 to enter the room to prevent Ah Hock from running out of the room and to calm him down.

[149] He said as he and Saiful Rizal left the investigation room, he needed to use the toilet and left Saiful Rizal outside the toilet. He said he left the toilet door ajar in order that he would be able to see him. Coming out of the toilet he saw PC 4534 Masri standing near Saiful Rizal and instructed him to take the suspect to the fingerprint office for fingerprint taking. He said PC Masri left with Saiful and he went out behind the CID room to light a cigarette.

[150] Outside the CID room Pg Asmanuddin D4 met him to apologise for interfering with his investigation. He acknowledged the apology and left for the fingerprint room. On the evening of 22 January 2009 around 2252 hours, he said he and D2 visited Ah Hock in his Sengkurong cell and found him sleeping and nothing appear to be wrong with him. He said Ah Hock's condition correspondence with the initial entry on the Sengkurong police diary where CRO had written in the diary that Ah Hock was well but was later tip-ex and replaced 'Ah Hock was weak'. He believes that similar entries in entry 89 and 91 were also tip-ex from their original words to make it appears Ah Hock was weak.

[151] He said on 23 January 2009 around 1500 hours Ah Hock was brought to RIPAS for medical examination. Dr Lim told him that Ah Hock was in a healthy condition. He said Dr Lim examination showed some bruises on Ah Hock and he said it is possible that they may come about either during the struggle at Limau Manis Police Station during his arrest or on the 21 January 2009 when D2 and D3 prevented Ah Hock from attacking Saiful Rizal on the 22 January. He said it couldn't be ruled out that somebody assaulted Ah Hock

at Sengkurong Police Station lock up in the evening of the 22 January as this explains the amendments to the station diary.

[152] On the 24 January 2009 around 0900 hours, he and his CID Limau Manis members brought Ah Hock to the BSB Magistrate Court for an application for Ah Hock to be further remanded. DPP Atiyyah who was handling the mention was asked by the presiding magistrate why was there a further need to remand Ah Hock as he had this for refused to cooperate. He said he informed DPP Atiyyah which she repeated to the court 'The police will find a way to make him talk'. He said it was never his attention that these words to mean the police would beat up the suspect and force him to talk. He said what he meant was the police will attempt to record Ah Hock's statement.

[153] He said he brought Ah Hock to RIPAS Hospital as ordered by the magistrate and was seen by Dr Eddy who confirmed Ah Hock was in a healthy condition. He said as regards the event on the evening of 22 January 2009 he said it is not the duty of CID officers to record statement, as those are the functions of the investigating officer. He said on the 27 January 2009, PC Amir Shah came to him crying informing him that he was forced by Sgt Bahar to falsely accuse him of beating up Ah Hock.

L/Cpl Sofian Jumat ('DW2')

[154] L/Cpl Sofian is a member of CID Limau Manis Police Station for six years. In his testimony he said he, PC Masri and D3 arrested Ah Hock at the multi-storey car park in Bandar Seri Begawan. He said they had to use some reasonable force to arrest him and to get him handcuffed. They brought Ah Hock to Limau Manis Police Station for questioning. During questioning he said Ah Hock was uncooperative and highly aggressive. He said Ah Hock tried to escape and he stood in front of him to prevent this. Ah Hock kicked him in his stomach and left hand at which point PC Masri and D3 interviewed and managed to restrain him.

[155] On the evening of 22 January 2009, Ah Hock was brought to Sengkurong Police Station investigation room. He said he and D3 were instructed by D1 to bring Saiful Rizal into the investigation room in order to identify Ah Hock. He did not enter the investigation room by merely stood outside the entrance, which was ajar. He recalls Saiful Rizal identify Ah Hock as his accomplice for the theft at the Limau Manis Mosque which angered Ah Hock. Ah Hock became aggressive and was shouting at Saiful Rizal and about to kick him. Then D1 brought Saiful Rizal out of the investigation rooms. He said as Saiful Rizal left the investigation room. Ah Hock tried to chase after D1 and Saiful and then both he and D3 came into the room to stop Ah Hock.

[156] On the 23 January 2009, he received instruction from D1 to escort Ah Hock to RIPAS Hospital for blood and urine examination. On the 24 January 2009 he and APO 6263 escorted Ah Hock to the magistrate court. After the court mention, he said he and his CID Limau Manis colleague brought Ah Hock to RIPAS Hospital on the order of the magistrate for medical examination.

[157] On arrival at Sengkurong Police Station, he said he was met by PC Adnan Hj Aji who got into his car to inquire why Ah Hock was detained. He replied that Ah Hock was a suspect of a theft case at Limau Manis Mosque. He said Adnan was very upset and angry with this and suggested that he would teach Ah Hock a lesson and will beat him up that night. He told him not to do it. He recalls on the 27 January 2009 when he was detained, PC Amir Shah who was also a suspect in the case then came to him suddenly hugging him crying apologising to him. PC Amir Shah told him Saiful Rizal had accused him of beating Ah Hock and that he was told to say he witnessed the four of us assaulting Ah Hock.

[158] He said PC Amir Shah told him he knew that it was not true but he had no choice as Sgt Bahar had told him unless he accused the four of us then he will be accused for causing Ah Hock's death instead. L/Cpl Sofian said this incident was witnessed by D1, APO Harun, PC Masri. He said he also saw PC Amir Shah apologising to D1.

PC 4488 Pg Asmanuddin Pg Hj Md Said ('DW3')

[159] PC Pg Asmanuddin is a member of Sengkurong Police Station CID and had been working for the Royal Brunei Police Force for nine years. His testimony is simply that on the evening of 22 January 2009, as his CID team was about leave the Sengkurong Police Station to conduct on investigation, he went into the CID office and saw D1 with two detainees inside the investigation room. He said the three of them were standing at that time. One of the detainees was Ah Hock and the other Saiful Rizal. He said his attention was drawn to Ah Hock as he was a suspect in a case he was handling. He then entered the investigation room to question him. As he was about to question Ah Hock, D1 stopped him and informed him he wanted Saiful Rizal to identify Ah Hock. He said he then left the room.

[160] Feeling what he did inside the investigation was wrong, so he waited for an opportunity to apologise to D1. When he eventually met D1 at the back of the Sengkurong Police Station, he walked up to him to say his apology for his earlier intrusion. He said he had never slapped, kicked or punched Ah Hock on

the 22 January 2009 at any other time.

THE LAW

[161] For a charge under s 330 of the Penal Code, the prosecution has to prove the following:

(a) the defendants voluntarily cause hurt;

(b) the defendants caused such hurt in order to extort from the victim, a confession; and

(c) that such confession was required as possibly leading to the detection of an offence.

[162] Whilst under s 323 of the Penal Code, the prosecution has to prove:

(a) the defendant caused bodily pain to the complainant; and

(b) that he did such act intentionally or with knowledge that it would cause hurt.

[163] The burden of proving the charges rests with the prosecution. It is the duty of the prosecution to establish each and every ingredient of the charges and to prove that the defendants are guilty beyond reasonable doubt. This burden never shifts.

[164] At the conclusion of the trial it is the duty of the judge to review all the evidence of the witnesses in its totality and to determine whether the prosecution has established the essential elements of the charges. This is also done by taken into consideration the credibility of the witnesses by assessing their veracity and demeanour in court after having been subjected to cross-examination. Raja Azlan Shah J in *Tengku Mahmood v Public Prosecutor* [1974] 1 MLJ 110 said:

> The demeanour is not always the touchstone of truth. It is only one ingredient in arriving at a finding of credibility.

FINDINGS

[165] The bulk of the prosecution submission if not all, sought to establish the flaws and inconsistencies in the defence case, and as well seeking to use the statements of the defendants as evidence as against the other. As rightly pointed out by Mr Yusof, one is not allow to use statement of a defendant against another. A statement of the defendant can only have an adverse effect on

A another defendant provided that it is admissible pursuant to s 30 of the Evidence Act, which specifically requires them to be 'confessions' s 30 of the Evidence Act Cap 108 reads:

> When more persons than one are being tried jointly for the same offence, and a
B confession made by one of such person effecting himself and some other of such person is proved, the court may take into account such confession as against such other persons as well as against the person who make such confession.

C **[166]** As regards the defendants' statements, I believe none could be attributed as confessions and by themselves cannot be used against the other defendants except the maker of the statement (see — *Public Prosecutor v Hj Hassan Tamit and Norhayati Abdullah* [2003] JCBD 313).

D CREDIBILITY OF PROSECUTION WITNESS

[167] The case for the prosecution in large measure very much depended on the testimony of PW1 and PW3 who are key witnesses in the case. Mr Yusof had submitted extensively on the inconsistencies of their evidence and as well
E on the issue of their credibility. As far as the court is concerned, in assessing the credibility of a witness, his testimony must be tested against other evidence and the other prosecution witnesses after he is subjected to a cross examination. In *Khoo Cheng Huat v Public Prosecutor* [1991] 1 ML J 42 the court held that:

F > A witness cannot be regarded as worthy of credit at one moment and untrustworthy of another.

[168] It is trite law that where the finding of the court depends on an
G assessment of the credibility of witnesses, the trial judge should taken into account the demeanour of the witness, their consistencies or veracity of evidence and whether it was unshaken after a severe and rigorous cross-examination.

H **[169]** Relating to the evidence of Saiful Rizal PW1, during examination-in-chief, he was adamant that he saw the D1 kicked deceased on the stomach at the same time he said he saw D2 and D3 kicked and stepped on the deceased's stomach. In cross examination, he admitted being talked into giving favourable evidence for the prosecution in return for the prosecution not
I proceeding with impending charges against him. Saiful made a retraction in his second police report by saying that his earlier allegation against CID personnel of assaults him was not true. He had made four statements to Unit Siasatan Khas pertaining to the investigation of this case, all recorded by PC Ak Saiful Rizal of Unit Siasatan Khas.

[170] I note that halfway through the cross examination, he retracted his earlier evidence in court to say that the allegation of him being assaulted by Bandar CID was true and that his retraction in the police report was force out of him by Bandar CID.

[171] Saiful attributed his memory lapses in much of the cross-examination to his headache, suffering of dizzy spell and giddiness. He said given his constant headache and memory of his father's death he said he had little memory of the event of the 22 January 2009.

[172] He was visited by various people while on remand and one of them being PC Ak Saiful who attempted to persuade him not to refer certain matters to the court. He said his statement to the police on the 27 January 2009 was made at the suggestion of PC Ak Saiful who adopted the story about how the deceased had been assaulted because he said prior to that he could not remember anything.

[173] At the latter part of his testimony, he could not decide how many people were in the investigation room. He agrees that Ah Hock was angry with him and D1 had to come between them in order to stop being hit by Ah Hock.

[174] Saiful claimed he suffers from blood clot in his brain from his previous accident as a result he suffers giddy spells. This he said affects his memory retention as a result he gives wrong answers and had difficulties in understanding questions. When confronted with difficult questions, he indirectly asked for adjournment saying he has a severe headache, which resulted in court adjournment.

[175] As regards to the alleged incident of the 22 January 2009, he said he was confused as to what he said because 'his vision is all black'. He admitted that his statement pertaining to the incident of the 22 January 2009, which was recorded from him on The 25 January 2009, went missing. He recalled saying in the statement that he cannot remember the incident of the 22 January 2009.

[176] As regards the testimony PC Amir Shah PW3, the police recorded six statements from him pertaining to the investigation of this case and he admits in five of the statements he did not witness assault took place. He was also arrested and considered on accused in relation to this case.

[177] After allegedly seeing the assault, he met with Insp Kenny but didn't inform him of the incident. Even after the alleged assault he said he team up with D4 but he neither mention nor reprimand D4 of what D4 allegedly had done.

[178] In cross-examination, he seems to have forgotten the sequences of how the assault unfolded saying he was not sure and had only very faint recollection of it. He went so far as to say his evidence in court 'maybe not true'.

[179] Even with the presence of D1 in the line up he was not able to identify D1 in the first identification parade on the 30 January 2009. He was adamant that he did not see anyone in the parade and he was so sure and satisfied of his answer. In the second identification parade he was able to pick D3 but told the investigator that he merely said D3 'witnessing the investigation of Ah Hock near the cabinet'. As regards the third identification parade, he picked D2 and D4 from the line up and claimed to only see them 'talking'. He admitted to have been arrested after the ID Parade and was detained for 48 hours and that his second statement was taken during his detention.

MEDICAL EVIDENCE

[180] The medical finding by Dr Lim Hock Seng (PW28) upon his examination of the deceased on the 23 January 2009 was basically superficial bruises on the deceased abdomen and his right wrist. He opined that the superficial bruises on the right wrist might be attributed to the use of the handcuffs on the deceased. The bruise on the abdomen around the umbilical region were caused by blunt trauma and opined that the deceased condition does not warrant for him to be warded.

[181] Dr Eddy Ngatemo (PW29) examined the deceased on the 24 January 2009. The deceased informed him that he was beaten up when he was arrested. X-ray and blood investigation were conducted on the deceased and discharged him after having satisfied that the deceased was in good condition. By this time on the 24 January, Dr Eddy found new injuries aside from the deceased old amputated index and ring fingers bruising of the left infra orbital area below the left eye, bruise on the right side of the head, bruising on the left chest which were not present during the examination the day before. Dr Eddy opined that these new injuries could only be inflicted after the medical examination on the 23 January.

[182] Dr PU Telesinghe (PW30) said that had proper investigation had been conducted on the fingerprint mark on the neck of the deceased; the police could well have the fingerprint of the assailant. The same he said could be said to the footprint or heel mark on the deceased. He opined this could be the assailant's as no way could this be self-inflicted. The post mortem finding of 61 injuries and three broken ribs after the deceased death shows the severity and the intense of the assault is at it's highest after the 23 January when the deceased was in the lock up under the care of the Sengkurong Police Station.

ADVERSE INFERENCES AGAINST D3

[183] Section 221(5) of the Criminal Procedure Code Cap 7 provides for adverse inferences against an accused who chooses to remain silent and refused to give evidence.

[184] Section 221(5) of the CPC reads:

> The fact that the accused does not give evidence on oath or affirmation may be made the subject of an adverse comment by the prosecution and the court may draw such inferences therefrom as it thinks fit.

[185] The operative word in this section is 'therefrom' which means the prosecution's adverse comment. I am made aware by Mr Ng of the adverse comment by the prosecution against D3 in their submission after D3 elected to remain silent and offer no evidence on his behalf in this case.

[186] It is a well-established law that an inference from failure to give evidence is not a proof that the accused is guilty as the burden of proof remains upon the prosecution throughout. The defendant has every right to remain silent. If the judge comes to the conclusion that that the accused election to remain silent can sensibly be attributed to him having no answer or none that would stand up to cross examination, only then, he may draw on adverse inference (see *R v Cowan and others appeals* [1995] 4 ALL ER 939). I believe that adverse inference can only be drawn upon unless there is cogent evidence, which the accused has to answer.

[187] In this case the only evidence against D3 as is against the rest of the defendants is based primarily on the evidence of PW1 and PW3 whose credibility as prime witnesses are called into questioned. Having scrutinised the prosecution evidence against D3, I do not see any situation where it can be said he would not be able to stand up to cross-examination had he elected to give evidence. As such, I see no reason for me to draw any adverse or negative inference against D3.

[188] For completeness, I hereby summarised my other findings as far as the remaining charges are concerned. They are as follows:

(a) there are conflicting and differing accounts between the prosecution witnesses of what allegedly happen in the investigation room, inconsistencies as to those present in the room with the deceased at one particular time;

(b) Dr Eddy testimony that the deceased informed that he had the bruises

because he was beaten up at the time of his arrest corroborates the fact that the deceased was resisting arrest at the time of his capture at the multi-storey car park;

(c) PC Amir Shah did falsely accuse the defendants in his statement and in court as corroborated by the evidence of PC Masri and APO Harun;

(d) Supt Matusin's evidence that his investigation reveals no evidence to suggest the defendants ever attempted to record a statement from the deceased. I believe this to be true and adopt the same to be the finding of the court;

(e) no evidence to suggest that the defendants had any intention or plan to physically abused the deceased in order to make him talk; and

(f) I accept PC Masri's evidence when he said that standing from where Saiful Rizal was ie in front of the toilet outside the investigation room, it was impossible for him to see inside the investigation room. This is also corroborated by the testimony of PC Amir Shah.

CONCLUSION

[189] In this judgment, I have only recited a summary of the testimonies of some of the prosecution witnesses whom I believe to be relevant to the outcome of this case. Having said that, I have, however, given full consideration to all the witnesses' evidence including any inconsistencies if any in the evidence of each as well as between the witnesses. The rigorous cross-examination of the witnesses had helped the court with this conclusion.

[190] The level of investigation of this case was much to be desired. Either the investigation orders were not specifically follows to its fullest or the conduct of the investigations is such that it was purposely directed to a certain course, which this court has difficulties in understanding.

[191] Several statements were recorded of witnesses including the defendants went missing and not available at the trial. It is not known if the prosecution had sight of these statements. I am sure if they had, the conduct, direction and outcome of the prosecution of this case would have been different. To say the failure to send the nail scrapping, nail cutting, the defendants' shoes and to make imprint of the ringer imprint on the neck and the shoe imprint on the body of the deceased for forensic analysis as an oversight on the part of the investigating officer is perhaps an under statement of the highest order given these are vital evidence which are available to determine a just outcome of the investigation. This failure obviously leaves a huge gap in the prosecution case.

[192] The rigorous cross-examination of the key witnesses of PW1 and PW3 have shown to the court how both have inconsistence in their testimonies and in that they kept changing their evidence when it suits them. Tested against the other prosecution witnesses and documentary evidence before this court, clearly shows that PW1 and PW3 are not truthful and credible witnesses.

[193] Saiful Rizal (PW1) testimony bears a testimony of a desperate man who made impetuous decisions when it suits him. In this case I believe he was obliged to give the investigators a favourable testimony against the defendants in the hope that the police would not proceed with his impending cases in court. As an accomplice in the theft related cases against him and Ah Hock he has an obvious interest in the case. Throughout his evidence, he had changed his version of his story on numerous occasions. His inconsistencies marked him out as a fickle, chameleonlike and unreliable witness.

[194] As regards PC Amir Shah (PW3), at the initial stage of his testimony he was adamant that he witnessed the assault on the deceased by the defendants. At the latter stage of his testimony however, he seemed to change his mind claiming he only had a faint recollection of the event. Out of the six statements he made to the police, only one gave an account of the assault whilst the remaining five which went missing, he readily admits did not say that he was a witness to the alleged assault on the 22 January 2009.

[195] He is obviously an interested partly in this case. Unit Siasatan Khas detained him for questioning for 48 hours as a suspect. I believe he was coerced into making the allegation against the defendant in his statement and as well as in court, given that he admitted to being given the ultimatum of either being the accused or the accuser by member of the Unit Siasatan Khas. This is corroborated respectively by the evidence of PC Masri and APO Harun who testified that PC Amir Shah admitted to falsely accused the defendants and seeing him crying and seeking forgiveness from D2 for falsely accusing him.

[196] Having made my finding of the evidence of PW1 and PW3 to be unworthy of credit, it follows that their testimonies to be unsafe. Having scrutinised all the evidence in this case in in it's entirety, I have no hesitation in concluding that the prosecution has failed to prove beyond reasonable doubt the first and the second alternative charges to the second charge against all the defendants and the fourth defendant respectively. Accordingly, I acquit them of all the charges and order the defendants are to be acquitted and discharged.

Accused acquitted and discharge of all charges.

Reported by Ashok Kumar